

**Rules of the Committee on Admissions and Grievances
for the United States Court of Appeals for the Second Circuit**

The Committee on Admissions and Grievances for the United States Court of Appeals for the Second Circuit ("the Committee"), appointed pursuant to Second Circuit Local Rule 46(h)(1), promulgates the following rules to govern the Committee's proceedings. See Second Circuit Local Rule 46(h)(3) ("Except as otherwise ordered by the Court the Committee shall in its discretion make and be governed by its own rules of procedure.").

1. Incorporation of Federal Rule of Appellate Procedure 46 and Second Circuit Local Rule 46; Effective Date of Committee's Rules.

a. The relevant provisions of Federal Rule of Appellate Procedure 46 and Second Circuit Local Rule 46 ("Local Rule 46"), and all future amendments to those rules, are incorporated by reference into these rules. In all respects, the Committee's rules will be construed as being consistent with, and, where appropriate, implementing, the relevant provisions of those rules.

b. These rules are effective as of May 21, 2007, and supersede all prior Committee rules.

2. Referral of Matters to the Committee; Transfer of Matters by the Committee.

a. Referrals by the Court. The Committee will consider only those matters referred to it by the United States Court of Appeals for the Second Circuit ("the Court"), through the Court's panel of judges responsible for attorney grievances and discipline ("the Grievance Panel").

b. Matters Submitted to Committee by Other Sources. If a matter is submitted to the Committee by any person or entity other than the Grievance Panel, the Committee will either:

(1) if the matter pertains to any item described in Rule 3, transfer the matter to the Grievance Panel for its initial consideration; or

(2) if the matter is not one that the Committee is required to transfer to the Grievance Panel, dispose of the matter in a reasonable fashion, which may include: referral to a law enforcement

or other governmental agency, an appropriate bar association, or other attorney disciplinary committee; return of the submission to the person or entity from whom it was received; summary dismissal of the matter if further action is not appropriate; or discretionary referral to the Grievance Panel.

c. Referrals by the Committee. The Committee may, in its discretion, refer a matter previously referred to it by the Grievance Panel to an appropriate bar association for preliminary investigation. See Local Rule 46(h)(2).

3. Scope of Referrals.

a. The Grievance Panel may refer the following matters to the Committee:

(1) any possible misconduct relating to any professional matter before the Court by an attorney who is a member of the bar of the Court or, if not a member of the Court's bar, who has appeared, or is in any manner involved, in any professional matter before the Court;

(2) even in the absence of possible misconduct, any circumstance suggesting that an attorney described in subsection (a)(1) of this rule is, for any reason, unable to meet his present or future professional obligations to the Court, either in a particular pending case or in any possible future case submitted to the Court; or

(3) any other situation in which the Grievance Panel seeks the aid and guidance of the Committee, including matters relating to applications for admission or reinstatement to the Court's bar, possible reciprocal suspension or disbarment based on an attorney's suspension or disbarment by another court or bar, possible discipline based upon an attorney's criminal conviction, and possible discipline or other corrective measure based upon an attorney's conduct caused by or resulting from physical or mental infirmity, or the use of alcohol, drugs or other substances. See Local Rule 46(f), (g).

b. The Grievance Panel may refer matters to the Committee based upon accusations or evidence of affirmative misconduct, negligent conduct, or conduct caused by or resulting from physical or mental infirmity, or use of alcohol, drugs or other substances. See Local Rule 46(h) (2).

4. Standards of Professional Conduct.

An attorney may be subject to discipline or other corrective measures for any act or omission that violates the rules of professional conduct or responsibility of the state or other jurisdiction where the attorney maintains his or her principal office, or the rules of professional conduct or responsibility of any other state or jurisdiction governing the attorney's conduct. An attorney also may be subject to discipline or other corrective measures for any failure to comply with a Federal Rule of Appellate Procedure, a Local Rule of the Court, an order or other instruction of the Court, or a rule of professional conduct or responsibility of the Court, or any other conduct unbecoming a member of the bar.

5. Committee Decisions and Delegation of Functions.

All Committee decisions will be by majority vote, provided that at least a quorum of the Committee's members is present. However, investigatory, hearing, and other Committee-related tasks may be delegated by the Committee to one or more Committee members, or other persons acting under the direction of one or more Committee members. Committee members acting under such delegated authority may recommend a final disposition to the Committee of the whole. All decisions made by Committee members or other persons acting under such delegated authority may be appealed to the Committee; any such appeal should be made at the time the delegated matter is presented to the Committee of the whole for final disposition, unless the affected person makes a showing that irreparable harm will result in the absence of immediate appeal.

6. Possible Committee Recommendations to the Grievance Panel.

In matters referred to the Committee, the Committee may recommend to the Grievance Panel, after the attorney who is

the subject of the referral has received proper notice of any charges and an opportunity to be heard, that the attorney be **(a)** removed from the bar of the Court, **(b)** if not a member of the bar of the Court, precluded from becoming a member or from appearing in future cases in the Court, **(c)** suspended from practice before the Court, for either an indefinite or a specified period of time, **(d)** publicly or privately reprimanded, **(e)** monetarily sanctioned, **(f)** removed from the Court's pro bono or Criminal Justice Act panels, **(g)** referred to another disciplinary committee, bar association, law enforcement agency, or other agency or organization, **(h)** subject to the supervision of a special master, or receive some form of counseling or treatment by an appropriately certified person, or **(i)** subject to such other disciplinary or corrective measures as the circumstances may warrant, including any combination of the preceding possible actions.

7. Committee Proceedings.

a. Investigation. Unless the Grievance Panel directs otherwise, the Committee may commence an investigation of any matter referred to it prior to the provision of notice to the attorney.

b. Notice of Charges. Generally, in any matter referred to the Committee based on possible misconduct or any other circumstance described in Rule 3, the Committee will provide the attorney with a statement in writing of the allegations against the attorney and order the attorney to show cause why discipline or other corrective measures, either specified in the order or to be later determined, should not be imposed. See Local Rule 46(h)(3). The order will be served on the attorney personally or by certified or registered mail, will notify the attorney of the alleged conduct and the reason the conduct may justify disciplinary or other corrective action, and will direct that 5 copies of a response, including any supporting evidence or request for a hearing, be filed within 30 days of service of the order, or such other time as the order may specify. The Committee will also append a copy of these rules to the order.

c. Response to the Notice of Charges. Prior to the filing of a response, the attorney has the right to examine all documents in the record, unless a protective order is obtained from the Grievance Panel. In any response to the

Committee's notice of charges and order to show cause, the attorney must **(1)** list all bars to which the attorney is admitted, including all bar numbers and other bar identification information, **(2)** list all cases pending before the Court in which the attorney is involved, **(3)** note which, if any, of the facts alleged are controverted, **(4)** specify the basis on which any controverted facts are disputed, **(5)** detail any additional facts that are relevant to the Committee's determinations on the need for discipline or other corrective measures, including facts relevant to mitigation, and **(6)** produce all documents demanded in the Committee's order to show cause. The attorney's response must be made under oath or in such other form that the penalties for perjury will apply. A copy of the response may, in the discretion of the Committee, be furnished to a complainant or other person whose participation in the proceeding may be useful.

d. Hearing. After the attorney has responded to the Committee's order to show cause, or upon expiration of the time to respond, the Committee will hold a hearing, on at least ten days' notice to the attorney, making a record of its proceedings. The hearing may consist of oral presentations or written submissions, as the circumstances warrant. In the event the attorney does not respond to the order to show cause, or otherwise waives his or her right to appear at a hearing, or the Committee finds that oral testimony or argument is not required, the Committee may take summary action and will report its recommendation immediately to the Grievance Panel. In the event that the attorney appears at his or her hearing, the attorney will be entitled to be represented by counsel, to present witnesses and other evidence on the attorney's behalf, and to confront and cross-examine under oath any witnesses against the attorney. The Committee, or the person(s) presiding over a hearing, may announce and be governed by any other rules of procedure warranted by the circumstances of a particular matter. See Local Rule 46(h)(3). The attorney and all witnesses must testify under oath.

e. Subpoenas and Other Orders.

(1) Subpoenas and Orders Requiring Production of Evidence, Testimony, or Examination. The Committee or the attorney who is the subject of a proceeding before the Committee may apply to the Grievance Panel for a subpoena or other order requiring **(A)** the production of

relevant documents or other evidence in the possession of third parties or the attorney, **(B)** the presence and testimony of relevant witnesses or the attorney at a deposition or hearing, or **(C)** a witness or the attorney to submit to a physical or mental examination by a suitably licensed or certified examiner.

(2) Protective Orders. The Committee, the attorney, or any other affected person may apply to the Grievance Panel for a protective order.

(3) Sanction Orders. The Committee, the attorney, or any other affected person may apply to the Grievance Panel for an order sanctioning any person who fails to obey a Committee or Grievance Panel order or who violates the Committee's or the Court's confidentiality rules.

f. Exception to Notice and Hearing Requirements. In particular matters, the Grievance Panel's referral may preclude, or not necessitate, use of one or more of the procedures described in this rule. Additionally, if the Committee itself determines that one or more of the procedures described in this rule are unnecessary or in any way inappropriate, that determination should be stated in the Committee's report to the Grievance Panel.

g. Effect of Attorney's Incapacity, Death, or Actual or Proffered Resignation on Committee Proceedings. Once a matter has been referred to the Committee by the Grievance Panel, the Committee in the first instance will determine the effect of the subject attorney's incapacity, death, or actual or proffered resignation on Committee proceedings. That determination will then be incorporated into the Committee's report to the Grievance Panel.

h. Burdens of Proof. Any finding that an attorney has engaged in misconduct or is otherwise subject to corrective measures must be supported by clear and convincing evidence. A certified copy of a final order of suspension or disbarment or of a judgment of conviction for a criminal offense, entered in any state or federal court, will be considered clear and convincing evidence. However, once the existence of a final order of suspension or disbarment, or judgment of conviction for a criminal offense, is established, or an attorney seeks reinstatement after having been suspended or disbarred by the Court, the attorney's request that he or she not be subjected to disciplinary or

other corrective measures, or that he or she be reinstated to the Court's bar, must be supported by clear and convincing evidence.

i. Submission of the Committee's Report to the Grievance Panel.

The Committee will file the record of its proceedings, its report containing its analysis and recommendations, and any dissenting or minority report, with the Clerk of the Court, who will retain them under seal after furnishing the Grievance Panel with copies. The Committee, in its discretion, may inform a complainant or other interested party that the Committee's report has been filed with the Court. On the day of filing, the Clerk will mail a copy of the Committee's report to the affected attorney and make the record of the Committee's proceedings available to the attorney. Within twenty days after the filing of the record and report, the attorney may file with the Clerk a statement, not to exceed ten typewritten pages in length, in opposition to or mitigation of the Committee's report. See Local Rule 46(h)(4). The Grievance Panel may request the Committee to reply to the attorney's responding statement.

8. Confidentiality.

In general, all matters referred to, all proceedings conducted by, and all records possessed by, the Committee will remain confidential, unless the Grievance Panel orders otherwise. However, **(a)** the attorney who is the subject of a proceeding may request that all or part of a proceeding or the record be made public, **(b)** the Committee may, when necessary to the Committee's proceedings, allow persons who are not Committee members to be privy to all or part of a proceeding or record, providing those persons agree to comply with the confidentiality requirements, **(c)** regarding information that is not part of a matter referred to the Committee by the Grievance Panel, the Committee may make its own reasonable determination of whether confidentiality should be maintained, **(d)** the attorney who is the subject of, and witnesses appearing in, a matter may make public their own testimony or documents, to the extent the Grievance Panel does not order otherwise, and **(e)** in all matters, the Committee may make recommendations to the Grievance Panel concerning confidentiality issues, including the possible need for protective orders or orders sanctioning the violation of a confidentiality rule, or the desirability of making public, in whole or part, a matter

that is otherwise confidential under these rules. Among other things, the Committee may recommend public disclosure, or notification to particular persons or entities, in order to protect the public, the administration of justice, or the legal profession.

9. Service of Papers and Other Notices.

Service of an order to show cause instituting a formal Committee proceeding concerning an attorney will be made by personal service or by registered or certified mail addressed to the attorney at the Court's address of record for the attorney. Service of any other paper or notice required by these Rules will be deemed to have been made if the paper or notice is addressed, and mailed by first class delivery, to the attorney at the Court's address of record for the attorney or, if the attorney is represented by counsel, to counsel's address of record. If service cannot be made on the attorney at the Court's address of record for the attorney, the Committee will use its discretion in determining how to complete service, and, if necessary, may attempt service at other addresses found in the Court's files or in the files of any bar of which the attorney is a member.